

THE SIZE AND IMPACT OF INTRA-EU POSTING ON THE BELGIAN ECONOMY

With a special focus on the
construction sector

- Summary -

Frederic De Wispelaere & Jozef Pacolet

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RESEARCH INSTITUTE FOR WORK AND SOCIETY

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Summary

Despite the heated debate on the negative consequences of intra-EU posting on the Belgian economy, and more specifically on the Belgian construction sector, the profile and impact of this phenomenon have not yet been mapped out in detail. For example, we know that the largest group of people posted to Belgium are active in the construction sector, but to date no further breakdown of sub-sectors in the industry is available. The question is also whether posting causes a displacement of domestic jobs in each sub-sector. At the same time we know nothing or very little about the Belgian clients that use posting. What is their business economic profile and do they display a different profile than companies that do not use posting? We also establish a ‘bastardisation’ of the term ‘social dumping’, a term with which posting is often linked.

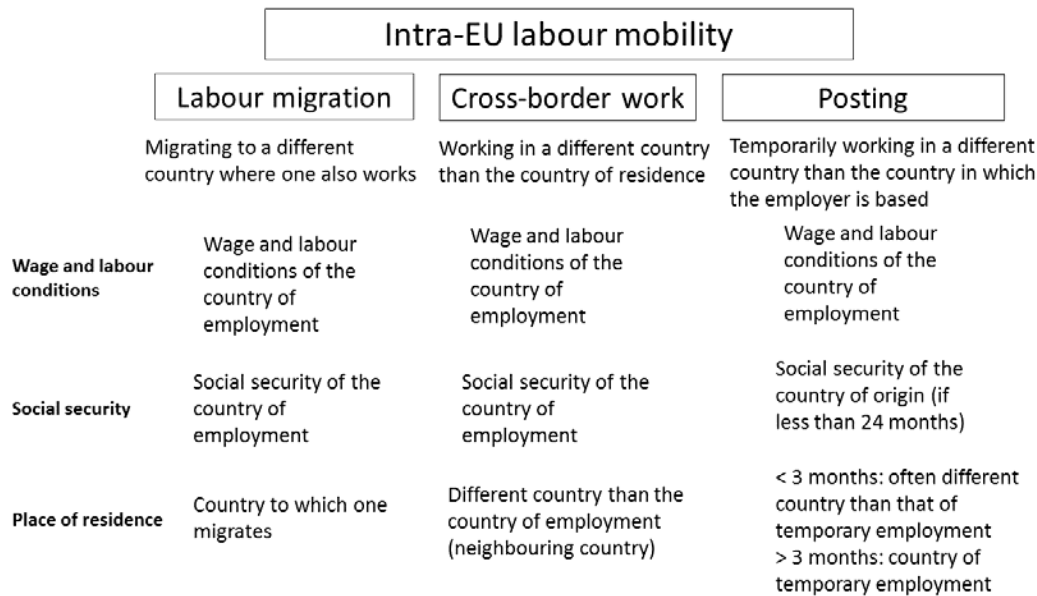
The available European and national evidence related to the size and impact of intra-EU posting on the Belgian economy was studied with the support of the ACV (The Confederation of Christian Trade Unions of Belgium) - Mecenaatkrediet NBB (National Bank of Belgium ACV patronage credit).¹ The underlying reasons for the ever increasing use of posting are also explored. Lastly, the fraudulent dimension of posting is discussed. Since posting predominantly manifests in the construction sector, the study focuses on this sector.

1 What is intra-EU posting?

Labour mobility in the EU can take three forms (*Figure 1*). There is cross-border work and seasonal work, in which people live in one Member State and work in another. People may migrate from one Member State to another, or people can be temporarily posted by their employer to a different Member State to perform their services there. The latter is called posting. Therefore posting is a situation in which an employer based outside Belgian territory sends employees to Belgium to work there for a certain period of time. However, self-employed people can also post themselves temporarily to a different Member State to render a particular service. As a rule, the Member State’s social security legislation in which the employee or self-employed person is working applies. Nevertheless, posting is an exception to this principle given that the social security legislation of the sending Member State continues to apply for a period of up to 24 months. Therefore the person posted to Belgium is not subject to Belgian social security, but to that of the sending Member State. This also means that he or she pays social security contributions in the sending Member State and these amounts also differ from those that apply in Belgium. In addition, a nucleus of terms and conditions of employment that apply in the receiving Member State must be respected. It means that Belgian wages and working conditions, including Belgian minimum wages must be respected when employees are posted to Belgium.

¹ For the report see De Wispelaere, F. & Pacolet, J. (2017), *De omvang en impact van intra-EU detachering op de Belgische economie. Met een specifieke focus op de bouwsector*, HIVA-KU Leuven.

Figure1 Legislation that applies to intra-EU labour mobility



Source Own figure

2 What is the size and profile of intra-EU posting to Belgium?

2.1 How can it be quantified?

At the Belgian level interesting data related to the number of postings to Belgium is collected via GOTOT-IN (*GrensOverschrijdende Tewerkstelling - Occupation Transfrontalière*) and LIMOSA (*Landen-overschrijdend Informatiesysteem ten behoeve van Migratie Onderzoek bij de Sociale Administratie*). The A1 forms received are registered by Belgium in GOTOT-IN. The A1 form serves as proof that a person pays social security contributions in a different Member State and must be requested by the employer when employees are posted abroad. Since 1 April 2007, the LIMOSA reporting duty provides an advance report of posted employees and self-employed persons. As proof of receipt of the report, an L1 form is issued for each posted worker working here. Counting the number of A1 forms received and registered in GOTOT-IN and the number of reports in LIMOSA is a first method for measuring the number of postings to Belgium. However, quantifying the number of individuals behind these forms or reports is still a much better method for measuring the size and certainly also the impact of posting. The same person can be posted several times a year. Consequently this person will be registered in LIMOSA several times or several A1 forms will be received for this person. However, at the same time the posting period may exceed the year of notification or issue. These people must also be counted if one wants to produce a correct estimate of the extent of the number of postings on an annual basis. The number of individuals thus consists of the number of people that have worked in Belgium during the course of the year for at least one day and therefore were not subject to the Belgian social security system. The data available in GOTOT-IN and LIMOSA also makes it possible to compile a detailed profile of the persons posted to Belgium. In that way, one can obtain an idea of the Member State in which the employer is based and thus where the posted employee is subject to social security contributions, the nationality and place of residence of the person posted can be obtained, a differentiation can be made between posted employees and self-employed persons as well as between the use of temporary agency work, and an estimate can be produced of the posting period. The sector of activity can only be broken down using LIMOSA. It

reveals whether the employer of the posted worker is involved in construction activities; however, details for other sectors are not available. Lastly, the number of employers of persons posted to Belgium and their clients can be counted and (limited) information is also available regarding their profile. It constitutes a wealth of data about the size and the profile of posting that is not available in such detail anywhere else in Europe.

2.2 The size and profile of intra-EU posting to Belgium based on LIMOSA

In LIMOSA, 210,815 individual intra-EU posted workers were registered in 2015 (*Table 1*). This figure has increased significantly in recent years and, compared with 2011, rose by 70% or almost 87,000 individual posted workers. Based on recent figures for 2016 it appears that the number of individual posted workers decreased somewhat compared with 2015, during which the number of individual posted employees display a limited increase, but the number of individual posted self-employed persons did, in fact, decrease.

If one specifically examines the construction sector, 130,597 individual posted workers were registered in 2015. At the same time the increase in the number of individual posted workers active in the construction sector was considerably higher than that compared to the economy as a whole. Compared with 2011, in 2015 there were at least 188% more individual posted workers registered as working in the construction sector. This amounts to an increase of circa 85,000 individual posted workers. Therefore, there is only a significant increase in the number of posted workers in the construction sector, given that 98% of total growth can be attributed to posted workers employed in the construction sector. The construction sector's share of the total has also increased significantly in recent years. In 2011, 'only' 36.5% of the total number of individual posted workers were working in the construction sector. Due to the significant increase this percentage share rose by a considerable 25.5 percentage points, which means in 2015 the construction sector was good for 62% of the total number of individuals posted to Belgium. In 2015, there were also 51,604 individual employers registered, of which 35,696 were involved in the construction sector. Lastly, 26,862 individual clients were counted in LIMOSA for 2015, of which 16,908 clients enlisted the services of posted workers employed in the construction sector. This means that on average each Belgian client enlisted the services of two foreign employers and eight posted workers.

The number of registered individual posted workers in LIMOSA is noticeably higher than in comparison with those registered in GOTOT-IN (143,045 individuals). This also means that the number of posted workers registered in LIMOSA is approximately 1.5 times higher than that registered in GOTOT-IN.

Table 1 Number of individual intra-EU posted workers in Belgium, number of individual employers and number of individual clients based on LIMOSA and GOTOT-IN, 2011-2015

Databank		2011	2012	2013	2014	2015	Change 2011-2015
		<i>Numbers</i>					
		<i>Number of individual posted employees</i>					
LIMOSA	Total	124,060	139,664	163,383	186,525	210,815	86,755
	Construction sector	45,276	57,461	85,572	114,096	130,597	85,321
GOTOT-IN	Total	81,011	88,042	140,408	122,580	143,045	62,034
		<i>Number of individual employers</i>					
LIMOSA	Total	21,308	24,656	35,045	41,811	51,604	30,296
	Construction sector	8,085	10,491	21,141	27,676	35,696	27,611
GOTOT-IN	Total	18,377	24,478	30,870	31,455	37,330	18,953
		<i>Number of individual clients</i>					
LIMOSA	Total	16,031	17,976	21,368	24,790	26,862	10,831
	Construction sector	6,533	8,172	12,165	15,481	16,908	10,375
		<i>% change compared with previous year</i>					
		<i>Number of individual posted employees</i>					
LIMOSA	Total		12.6	17.0	14.2	13.0	69.9
	Construction sector		26.9	48.9	33.3	14.5	188.4
GOTOT-IN	Total		8.7	59.5	-12.7	16.7	76.6
		<i>Number of individual employers</i>					
LIMOSA	Total		15.7	42.1	19.3	23.4	142.2
	Construction sector		29.8	101.5	30.9	29.0	341.5
GOTOT-IN	Total		33.2	26.1	1.9	18.7	103.1
		<i>Number of individual clients</i>					
LIMOSA	Total		12.1	18.9	16.0	8.4	67.6
	Construction sector		25.1	48.9	27.3	9.2	158.8
		<i>% share construction sector</i>					
% share Construction sector		36.5	41.1%	52.4	61.2	61.9	25.5 p.p.
		<i>Ratio of individual posted employees LIMOSA versus GOTOT-IN</i>					
LIMOSA vs. GOTOT-IN		1.53	1.59	1.16	1.52	1.47	

Source NSSO - LIMOSA and GOTOT-IN

Most people posted to Belgium work for an employer based in a neighbouring country or Poland. Almost half of posted workers work for an employer based in a neighbouring country, of which 26.5% of the total are based in the Netherlands. Moreover, 13.6% of people posted to Belgium work for an employer based in Poland. The percentage share of employers based in Poland increases when one focuses exclusively on posted workers working in the construction sector. Respectively 23.0% and 16.3% of posted workers employed in the construction sector work for an employer based in the Netherlands or Poland. The percentage share for Poland surges even higher if one examines the nationality of the posted worker.

While workers working for an employer based in France or Germany are mainly posted to a sector other than the construction sector, workers employed for an employer based in Poland, Portugal, Romania, Slovakia and Slovenia are predominantly to almost exclusively employed in the Belgian

construction sector. The picture is hazier when it comes to posted workers working for an employer based in the Netherlands or Luxembourg. To a certain extent it reflects what has already been established for the EU as a whole. That is, while most posted workers originating from an EU-13 Member State are employed in industry and more specifically in the construction sector, most people originating from an EU-15 Member State are employed in the services sector.²

It also appears that 93% of reported workers posted by an employer based in the Netherlands are also effectively resident there. Just 2% reside in Belgium and the same percentage is resident in Poland. A totally different picture is revealed when it comes to Poland. At least one in three reported persons posted by an employer based in Poland is resident in Belgium.

Fifteen percent of people posted to Belgium are self-employed. This share even makes it to 19% in the construction sector. If one examines the construction sector in more detail, it appears that 40% of posted workers from Poland have a self-employed status. It is also striking that at least three in four posted workers from Slovakia are self-employed. The fact that a significant percentage of posted workers working in the construction sector have a self-employed status will certainly have an impact on this sector. Their competitive advantage will be greater than posted employees since Belgian wages and working conditions do not apply to them and their social security contributions are lower. At the same time, reforming the Posting of Workers Directive (Directive 96/71/EC) will have no impact on this group. A complete differentiation of the type of posting (via cross-border subcontracting, via intra-group posting or via cross-border temporary agency work) cannot be made in LIMOSA. However, it does reveal whether or not the person was posted to Belgium by a temporary employment agency. It indicates that approximately 12% of posted workers work for a foreign temporary employment agency. This percentage is similar for both the total and the construction sector. If one focuses specifically on the construction sector, it appears that 19% of people posted from the Netherlands are posted by a temporary employment agency, and this while a meagre 9% of posted workers from Poland are posted by a temporary employment agency.

2.3 The profile of Belgian clients that enlist the services of posted workers working in the construction sector

Linking the company number of the Belgian client registered in LIMOSA, which has enlisted the services of posted workers employed in the construction sector, to the Bel-first database (a database with the financial accounts of all private firms in Belgium) provides an idea of the client's business economic profile. For example, this database can be consulted to establish the Joint Committee and NACE code that apply to companies that use posting. This means that natural persons are not included in this database. Note that not all the clients have been selected from LIMOSA, but only those that enlisted the services of posted workers active in the construction sector. Moreover, these details are not available for every client. A breakdown per sub-sector is only possible for clients whose company number has been reported/is known and those included in the Bel-first database. It concerns 4,359 companies, while a total of 16,908 individual clients were registered in LIMOSA in 2015 that used posted workers active in the construction sector. This means that the sample survey consists of 26% of the total number of clients.

When broken down according to the NACE code, most clients fall under 'General construction of residential buildings' (NACE 41.201). This sub-sector represents 14% of known clients and 17% of the number of reported posted workers active in the construction sector whose services were used. These are companies that construct the shells of single family homes and apartments. Subsequently 6% of clients and 9% of the number of reported posted workers active in the construction sector

² For the European evidence see Pacolet, J. & De Wispelaere, F. (2016), *Posting of workers: Report on A1 Portable Documents issued in 2015*, Network Statistics FMSSFE, European Commission, 54 p.

whose services were used, fall under ‘Other specialised construction activities’ (NACE 43.999). Businesses that perform activities such as plastering, electro-technical installations, roofing, central heating and ventilation installation and painting also appear to frequently use posted workers active in the construction sector.

Approximately 55% of companies that enlisted the services of posted workers active in the construction sector also perform their main activities in the construction sector. They even represent 76% of the number of reported posted workers active in the construction sector whose services were enlisted. This means that not all clients are necessarily active in the construction sector. It is also an initial indicator that subcontracting via posting is the main method rather than a foreign employer that performs construction activities for a Belgian client as the main contractor. Given that most clients are active in the construction sector it is therefore no surprise that approximately half of the companies that enlist the services of posted workers active in the construction sector fall under Joint Committee 124 for construction firms.

Lastly, large clients employ more, if not most of the posted workers.

3 What impact does intra-EU posting have on the Belgian construction sector?

3.1 Displacement of the number of domestic employees due to intra-EU posting but just as much a result of the growing number of self-employed persons

Since the introduction of transitional arrangements for ‘new’ EU Member States, one has had to deal with the ‘front door - back door problem’, in which the free movement of workers can be viewed as the front door and the free movement of services as the back door. Since restrictions were imposed on the free movement of workers, there has been substantial use of the freedom of establishment and the freedom to provide services. This involves the posting of employees and (bogus) self-employed persons, but also, although to a lesser degree, (bogus) self-employed persons that establish themselves in Belgium.

In 2015 intra-EU posting accounted for 4.4% of total employment in Belgium (*Table 2*). This is a very high percentage, in 2011 it was just 2.7%, which has, without a shadow of a doubt, implications for the Belgian labour market. This is also revealed by the fact that of the 142,000 additional persons employed between 2011 and 2015, just 24,000 are domestic employees, and a considerable 31,000 are domestic self-employed persons and 87,000 are posted workers. However, naturally this only concerns known registered employment. Employment creation in Belgium thus occurs primarily through posting. The impact posting will vary significantly depending on the (sub) sector. Intra-EU posting to Belgium has mainly manifested in the construction sector. Almost all additional posting over the past five years involves the construction sector.

Table 2 Share of intra-EU posting of total employment in the Belgian economy, 2011-2015

	2011	2012	2013	2014	2015	Change 2011-2015
	<i>Numbers (in thousands)</i>					
Number of domestic employees	3,800	3,809	3,785	3,794	3,825	24
Number of domestic self-employed persons	735	743	749	756	766	31
Number of individual intra-EU posted workers	124	140	163	187	211	87
Total employment	4,659	4,691	4,697	4,736	4,802	142
	<i>% share of the total</i>					
Number of domestic employees	81.6	81.2	80.6	80.1	79.7	-1.9
Number of domestic self-employed persons	15.8	15.8	15.9	16.0	16.0	0.2
Number of individual intra-EU posted workers	2.7	3.0	3.5	3.9	4.4	1.7
Total employment	100.0	100.0	100.0	100.0	100.0	

Source Own calculation based on NBB - Belgostat and NSSO - LIMOSA

In 2015, intra-EU posting accounted for one third of employment in the Belgian construction sector if the number of individual posted workers is added to domestic employment (*Table 3*). In 2015, the Belgian construction sector was characterised by average domestic employment of 265,400 persons including 199,600 employees and 65,800 self-employed persons. While the number of employed domestic workers decreased by 7% between 2011 and 2015, the number of self-employed persons increased by almost 11%. In this regard 7.5% of self-employed persons active in the construction sector were Romanian nationals and 6% Polish nationals. The percentage share of intra-EU posting of total employment in the construction sector increased by 19 percentage points between 2011 and 2015; given that this was just 14% in 2011, the sharp increase over such a short period is marked. The time at which this increase occurred is also surprising given the transitional arrangements related to the free movement of workers for persons from Member States that joined on 1 May 2004 expired on 30 April 2011. Bearing this in mind one would assume that the free movement of services via posting would be less popular after this time. However, the opposite has become the reality.

Table 3 Share of intra-EU posting of total employment in the Belgian construction sector, 2011-2015

	2011	2012	2013	2014	2015	Change 2011-2015
	<i>Numbers (in thousands)</i>					
Number of domestic employees	215.2	214.9	210	203.9	199.6	-16
Number of domestic self-employed persons	59.4	61	62.3	63.8	65.8	6
Number of individual intra-EU posted workers	45.3	57.5	85.6	114.1	130.6	85
<i>Of which self-employed</i>					25.3	
Total employment	319.9	333.4	357.9	381.8	396.0	76
	<i>% share of the total</i>					
Number of domestic employees	67.3	64.5	58.7	53.4	50.4	-16.9
Number of domestic self-employed persons	18.6	18.3	17.4	16.7	16.6	-2.0
Number of individual intra-EU posted workers	14.2	17.2	23.9	29.9	33.0	18.8
Total employment	100.0	100.0	100.0	100.0	100.0	

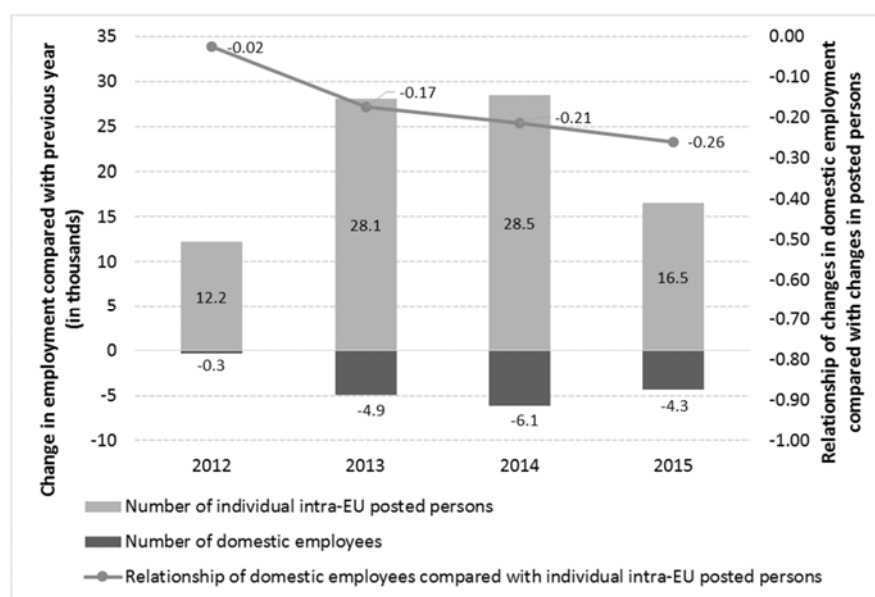
Source Own calculation based on Belgostat and NSSO - LIMOSA

However, the impact on employment in full-time equivalents is lower if one takes account of the average posting period per individual posted worker. Although a significant increase appears to have occurred here too. While in 2010, there was still an average posting period of 23 days per posting, based on a new estimate for 2015 this has risen to approximately 80 days per posting (56% of postings apply to a period of less than 1 month). Aware that this period has yet to be multiplied by the number of times an individual person was reported in LIMOSA during the year (approximately three times), in terms of full-time equivalents, posting accounts for over one in four jobs in the construction sector.

At the same time, one must point out the sector's continued increase of the number of self-employed persons. Between 2011 and 2015, the share of self-employed persons systematically increased up to and including almost a quarter of total domestic employment in the construction sector. In addition, as already established, almost 20% of posted workers to the Belgian construction sector have a self-employed status. This means that in 2015, over 91,000 self-employed persons (domestic or posted) worked in the Belgian construction sector.

The displacement effect, read a negative trend in the number of domestic employees and an increase in the number of incoming posted workers, becomes even clearer if this is linked to developments in investments in (residential) construction. One would expect domestic employment to develop alongside the investment climate; however, the opposite is true. In the last two years, there was an increase in investments in (residential) construction but at the same time there was a decrease in the number of domestic employees during the same period. During the period of 2010 up to and including 2015, a negative relationship was established between developments in investments in (residential) construction and developments in the domestic employment of workers. At the same time it is no wonder that a negative relationship exists between the evolution in the number of domestic employees and the evolution in the number of posted workers. However, one lost domestic job does not represent one additional posted job, or *vice versa*. The net change in domestic employment and individual posted workers in the construction sector clearly shows that far more jobs are created via posting than jobs that are lost among domestic employees. During the last three years, there have been five more individual intra-EU posted workers for one less domestic worker. In this respect posting is also supplementary (Figure 2).

Figure 2 Net change in domestic employment and individual posted workers in the construction sector, 2011-2015



Source Own calculation based on NBB - Belgostat and NSSO - LIMOSA

When the import of services to the Belgian construction sector is added to personnel costs for domestic workers, the expenditure for posting can be compared with the total personnel cost. However, it goes without saying that the amount for imported services not only includes personnel costs for the posted workers but also additional costs such as transport costs, accommodation and administrative costs as well as the profit the foreign employer wants to make on exporting services via posting. In 2014, expenditure for imported services accounted for 12% of total personnel costs in the Belgian construction sector (*Table 4*). This percentage increased slightly compared with previous years. However, the import of services can also be compared with the added value since account is not only taken of personnel costs but also the gross operating surplus of companies and the income of self-employed persons. In 2014, expenditure for importing services accounted for 5% of the added value in the construction sector. In order to be able to talk of a price advantage for posting both percentages must be lower than the share of posted workers of total employment in the Belgian construction sector. This means one employs more posted workers at a lower price. This is also clearly the case.

Table 4 Share of services imported to the Belgian construction sector as a percentage of total personnel costs and added value, 2010 – 2014

	2010	2011	2012	2013	2014
Construction abroad (code 250) (in millions of €) (A)	451	554	502	606	842
Construction in the reporting economy (code 251) (in millions of €) (B)	1,109	1,035	818	1,085	1,377
Total import of services (in millions of €) (A+B)	1,560	1,589	1,320	1,691	2,219
Personnel costs for domestic employment (in millions of €) (C)	9,051	9,538	9,885	9,595	9,837
Share of imports of services in the reporting economy in total personnel costs (B/(B+C))	10.9%	9.8%	7.6%	10.2%	12.3%
Added value (personnel cost and operating surplus) (in millions of €) (D)	14,854	15,992	15,687	15,712	16,518
Share of imports of services in the reporting economy in total added value (B/(B+D))	3.0%	3.5%	3.2%	3.9%	5.1%

* 'Construction abroad' (250): Consists of the goods and services that were purchased by the companies resident in the host economy; 'Construction in the reporting economy' (251): Consists of construction services provided by non-resident construction firms to residents of the reporting economy.

Source Eurostat - [bop_its6_det] and [sbs_na_con_r2]

3.2 However, displacement does not occur in every sub-sector

A displacement effect resulting from posting appears to mainly occur in the 'Construction of buildings; development of building projects' (NACE 41) and 'Plastering' (NACE 43.31) sub-sectors (*Table 5*). In 2014, the relative weight of the 'Plastering' sub-sector of the total construction sector was 0.5 percentage points lower than in 2010 and the employment of domestic workers in this sub-sector decreased by at least 25% over the same period. The weight of this sub-sector is also 7 percentage points higher for reported posted workers compared with the employment of domestic workers. A complementary effect of posting crops up in the 'Other specialised construction activities' (NACE 43.9) and 'Floor and wall covering' (NACE 43.33) sub-sectors. Lastly, the 'civil engineering' (NACE 42) sub-sector does not immediately appear to be prone to an influx of reported posted workers. Note that it is assumed that the posted worker performs the same activity as the Belgian client, while, this is not necessarily the case. For example, posted workers to the client active in NACE 41 may perform specialised construction activities (NACE 43). It assumes that we are aware of the profile of the foreign employer and thus not of the Belgian client; however, this data is not available.

Table 5 Sub-sector percentage share of the total construction sector, breakdown of domestic workers and posted workers, indicator of the impact of posting on domestic employment

NACE		Domestic workers				Posting*	
		% share 2014	% share 2010	Difference (in p.p.)	% change in employment last 4 years	% share 2015	Difference with domestic workers (in p.p.)
41	Construction of buildings, development of building projects	28.1	28.1	0.0	-2.5	35.2	7.0
42	Civil engineering	13.6	13.5	0.1	-1.8	6.9	-6.7
43	Specialised construction activities	58.3	58.4	-0.1	-2.8	57.9	-0.4
43.1	Demolition and site preparation	3.7	3.7	0.0	-2.2	3	-0.8
43.2	Electrical, plumbing and other building installation activities	23.7	23.2	0.5	-0.6	13	-10.9
43.3	Building completion and finishing	17.8	18.8	-0.9	-7.5	22	4.1
43.31	Plastering	1.5	2.0	-0.5	-25.1	8.6	7.1
43.32	Joinery installation	9.5	9.7	-0.2	-4.8	4.6	-4.9
43.33	Floor and wall covering	2.0	1.9	0.1	0.3	3.2	1.2
43.34	Painting and glazing	4.5	4.8	-0.3	-8.5	3.8	-0.7
43.39	Other building completion and finishing	0.4	0.4	0.0	-9.6	1.8	1.4
43.9	Other specialised construction activities	13.1	12.8	0.3	0.1	20	7.1

* Only the selection of clients that fall under the construction sector (NACE 41-43)

** p.p.: percentage points.

Source Calculations based on NSSO - LIMOSA, Belgostat and Eurostat - [sbs_na_con_r2]

3.3 Impact on parameters other than employment: not so dramatic for the sector after all?

Due to the fact that as a rule posted workers do not fall under the Belgian social security system and due to the extent of posting, one would expect the social security contributions paid by the construction sector to have decreased dramatically in recent years. However, this is not the case. The amount of social security contributions received has remained relatively stable in recent years despite the decrease in the number of people employed and the volume of work. It demonstrates that Belgian social security funding has not come under pressure due to the increase in the number of posted workers. However, contributions could have been higher given the extent of posting.

One could also calculate the percentage of added value in turnover. A decrease means that the share of added value is lower in turnover, partly due to the increase in services provided by third parties. The share of added value in turnover amounts to 26.5% for the construction sector. This percentage has remained relatively stable in recent years. This share has only decreased substantially in the 'Construction of buildings; development of building projects' (NACE 41) and 'Plastering' (NACE 43.31) sub-sectors. These are also sub-sectors that have a high number of reported posted workers and that have been confronted most with job displacement.

3.4 A dual employer market?

When one examines whether or not Belgian companies that fall under Joint Committee 124 and NACE 41-43 and that are registered as contractors, a total of 22,500 companies, enlisted the services of posted workers in 2015, it appears that of the 100 companies/contractors with the highest turnover, 8 out of 10 did use posting (*Table 6*). 7 out of 10 of the 100 companies/contractors with the greatest added value or most domestic workers also used posting. As turnover, added value and the size of the company decreases, the use of posting also decreases. Therefore small companies use posting less or not at all and may find it difficult to compete as a result. In total, 1 in 4 Belgian companies that fall under Joint Committee 124 used posting in 2015. However, this is an overestimate for the sector as a whole, considering the large number of companies with no employees. It means that according to estimates approximately 1 in 10 companies in the construction sector use posting.

Table 6 Percentage of Belgian companies that are known as clients of posted workers active in the construction sector, which fall under Joint Committee 124 and NACE 41-43 and are registered as contractors, N: 22,507

	Turnover	Added value	Size of Company
Top 100	80	71	67
Top 500	51	49	46
Top 1,000	36	38	36
Top 5,000	10	18	18

Source NSSO - LIMOSA and Bel-first

In the group of Belgian companies/contractors it also appears that the companies that used posting display a far better economic profile. In 2015, 57% of the companies/contractors that used posting employed more or the same number of domestic workers compared with 2011 (*Table 7*). While just 29% of companies/contractors that did not use posting employed more or the same number of domestic workers in 2015 compared with 2011. In addition, a much higher percentage of companies that used posting is characterised by the same or positive development in turnover (66% compared with 39%) and added value (56% compared with 45%) compared with companies that had not used posting. It reveals a picture of a dual employer market in the construction sector, in which large Belgian contractors benefit from the use of posting on the one hand, through their profits and operating surplus, whereas Belgian subcontractors (read smaller SMEs) are out-bid in the market on the other.

Table 7 Percentage of Belgian companies that are known as clients of posted workers active in the construction sector, which fall under Joint Committee 124 and NACE 41-43 and are registered as contractors, N: 22,507

	Company NOT known to be a client	Company known to be a client
Employees between 2011 and 2015	N=11,954	N=1,181
Fewer employees	71%	43%
More or same number of employees	29%	57%
Turnover between 2011 and 2015	N=2,034	N=344
Decrease in turnover	61%	34%
Increase or same turnover	39%	66%
Added value 2011 and 2015	N=8,914	N=1,324
Decrease in added value	55%	44%
Increase or same added value	45%	56%

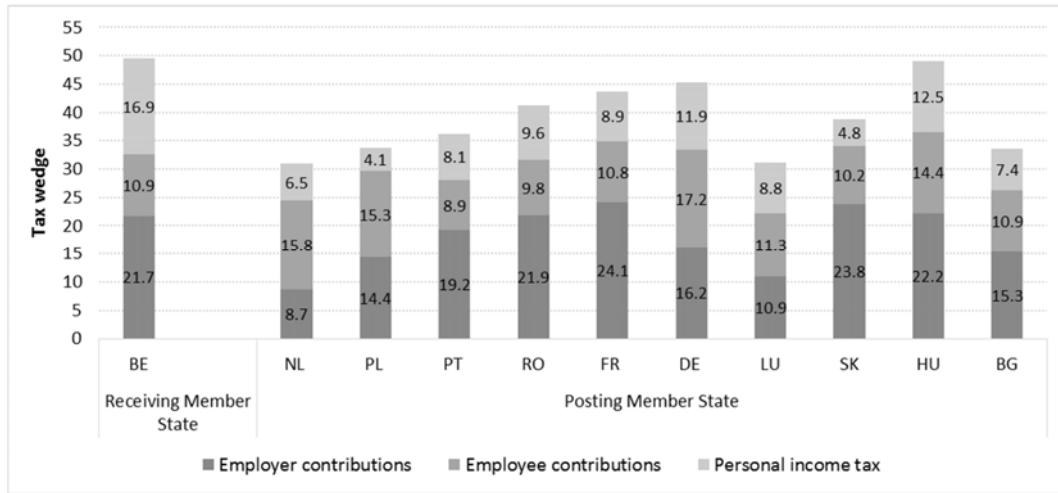
Source NSSO - LIMOSA and Bel-first

4 What are the underlying reasons for the increasing use of intra-EU posting?

What makes Belgium, and more specifically the construction sector so appealing for foreign employers that contract their services out via posting? Or is it the opposite; is posting more demand-driven? A number of push and pull factors can be established. From a receiving perspective possible reasons could be labour costs, the shortage of workers and the demand for more labour flexibility. However their order of importance for Belgium is a research question in itself that should be examined further. Is it indeed primarily about the cost of labour or is it also a question of more labour flexibility or a demand for available workers, or do other reasons perhaps play a role?

This does not detract from the fact that Belgium is characterised by a tax wedge (the difference between the wage costs for the employer and the employee's net wage) that is higher than in the ten main posting Member States (*Figure 3*). One could easily conclude that Belgium has a highly competitive disadvantage in this area. However, this is presumptuous given that a differentiation must be made between the difference in employer contributions on the one hand and the difference in employee contributions and personal income taxes on the other. The difference in employer contributions largely points to the actual competitive difference between Belgian companies and foreign companies that post people to Belgium. Of the ten main posting Member States only Slovakia and Hungary have a higher employer contribution percentage. The major difference with the Netherlands, the main posting Member State is particularly striking. The difference in employee contributions and income tax between Belgium and the ten main posting Member States once again ensures that posted workers will receive a higher net wage than Belgian employees. This advantage may/will be further reinforced by the differences in the prices of consumer goods and services between Member States.

Figure3 Tax wedge for single persons with no children and a gross wage equal to 67% of the average wage, Belgium compared with the ten main posting Member States based on LIMOSA, 2015



Source Eurostat / OECD - Tax and benefits database

Nonetheless, it's true that labour costs constitute just one aspect that will determine domestic and foreign companies' competitive advantage or disadvantage. Other aspects are differences in corporation taxes as well as differences in the knowledge and skills possessed by companies and their workers. Besides these, naturally there are also additional transport costs, accommodation and administrative costs for companies that post people.

5 What is the difference between social dumping and social fraud?

Based on the above, differences in the tax wedge between Belgium and the main posting countries could lead one to conclude that the solution of this competitive disadvantage lies in reducing social security contributions. This also appears to be the Belgian federal government's conclusion. In addition to a general reduction of the statutory contribution percentage for employers from 32.4% to 25% (i.e. tax shift), a budget of € 605 million has been announced for reducing employer social security contributions for companies that perform construction activities. This is to combat unfair competition from foreign companies via posting. This reduction could lead to a better competitive position compared with foreign employers, but at the same time, could equally lead to a race to the bottom/'tariff war', or one could even call it social dumping organised by the government that poses a risk to social security funding. A recent recommendation issued by the National Labour Council (NAR) states that a reduction in contributions is not a solution if the fight against social fraud is insufficient. This is an implicit indication of the best way the resources could be put to use.

In this respect a clear differentiation must also be made between the terms social dumping and social fraud. The term dumping, as well as social dumping, originally referred to the dismantling or undermining of the rules but not to evading them. The term has since been 'contaminated' by using it to refer to social fraud as well. It also makes sense to differentiate between the two terms. We define social dumping as *'one country reducing labour costs and labour conditions because of the pressure created by the competitive advantage that other countries have resulting from differences in national legislation that are not remedied by European legislation'*. This definition cites the reason why labour costs and labour conditions come under pressure from posting, particularly as a result of applicable European legislation. The definition thus ensures that social fraud via posting is differentiated from social dismantlement via posting. The recent Enforcement Directive 2014/67/EU that had to be transposed into national legislation by 18 June 2016 could be a useful tool in the fight against social fraud via posting. The debate on social dumping by posting relates to the application of Regulation (EC) No 883/2004 on

the coordination of social security systems and the Posting of Workers Directive (Directive 96/71/EC) and their possible reform.

Lastly, it appears that based on audit results performed by the Social Inspection Department one cannot claim that foreign companies operating in the construction sector commit more violations in percentage terms than domestic companies with regard to 'social security' and 'social documenting' matters. However, not every area is vulnerable to breach to the same extent. The Labour Law Inspectorate's audit results established a significantly high number of violations as regards compliance with the Belgian collective labour agreement by foreign companies with posted workers. In approximately 3 out of 10 audited cases in 2014, a violation regarding compliance with the Belgian collective labour agreement was established. This means that a high percentage of the inspected foreign companies do not respect the Belgian minimum wages.

6 Some recommendations

At the European level a number of measures have been taken that are intended to improve the free movement of services via posting, including the proposal to review the Directive concerning the Posting of Workers and Regulation (EC) No 883/2004, implementation of the Enforcement Directive and creation of a European platform to combat undeclared labour. A number of potential, additional measures such as no longer applying transitional arrangements in the accession of new Member States to the EU (the so-called 'front door - back door problem') and adapting the posting period and the exception to the 'country of employment principle' will have to be discussed and decided at European level. Naturally this takes time, which means national measures could offer a faster solution to the impact of posting. Therefore a number of national recommendations could be established. In 2015, a 'Plan for fair competition - 40 specific measures for the construction sector' was launched for the construction sector by the stakeholders involved. It proposed 27 national and 13 European measures. At the beginning of 2016, a plan for fair competition was also concluded for the transport sector. The plan consists of a total of 30 measures, 23 national measures and seven European measures. In addition several more recommendations can be established based on the research results in our report. However, this is not an exhaustive list.

A major role has been created for the social partners to avoid further segregation and to inform posted employees about their social rights and obligations. However, it also presupposes a more balanced debate that must acknowledge that not all posting represents social fraud and that the use of posting also frequently presumes a demand from a Belgian client/main contractor.

Posting predominantly occurs in the construction sector. Considering the impact posting has on domestic employment in the construction sector generally differs depending on the sub-sector, more targeted policy measures are desirable, rather than a general employer social security contribution reduction for the construction sector as a whole.

Job specialisation and innovation should ensure that certain jobs, even in the construction sector, are not subject to posting.

The construction sector continues to be vulnerable to fraud. Formalising undeclared labour could thus lead to further growth in domestic employment. Combined with checking that foreign companies, which post people to Belgium, comply with Belgian wage and labour conditions, this should ensure that domestic employment continues to be safeguarded. However, the increase of the number of self-employed persons in the construction sector also requires more effective monitoring of bogus self-employed persons among those registered with the National Institute for the Social Security of the Self-employed (NISSE) as well as those posted to Belgium. It illustrates the importance of the social inspection services and related investments. The payback effect, if we decide to use this term, not only manifests in regularisations or sanctions but also and even more in the domestic jobs that continue to be safeguarded.

The sending Member States and posted workers must be convinced that they will also benefit from correct compliance with Belgian wage and labour conditions and correct payment of social security contributions. The sending Member State will thus generate higher income since social security contributions and personal income taxes are levied to higher Belgian wages. Purchasing power of the posted employees will increase at the same time, which will also benefit the economy in the sending Member State. Proof of the correct payment of social security contributions could be provided as a result of information exchange between Member States. This will only serve to reinforce mutual trust between Member States.

Further valorisation of databases, such as LIMOSA, among inspecting organisations as well as for scientific research is desirable. It simultaneously presupposes that additional information will be included in LIMOSA. However, this has already been announced. Above all, a detailed estimate of the average posting period is vitally important for gauging the actual volume of labour represented by posting. This could also be useful for the tax administration if people stay longer than 183 days a year working as posted workers, since posted workers will pay income tax in Belgium as of this period.

At the same time there is insufficient knowledge of the profile of the Belgian user and the underlying motives for posting persons to Belgium. Is it indeed just merely about the cost of labour or is it also a question of more labour flexibility or a demand for available workforces, or do other reasons perhaps play a role? The policy can only benefit if a better understanding is acquired of these matters.

7 References

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